



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO KENAN TRANSPORT COMPANY

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.34.20, between the State Water Control Board and Kenan Transport Company, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Kenan" means Kenan Transport Company, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

8. "CSX" means CSX Transportation Company, providing railroad services for the nation and located in Jacksonville, Florida.

SECTION C: Findings of Fact and Conclusions of Law

1. Article 11 of the State Water Control Law prohibits the discharge of oil upon State waters, lands, or in storm drains.
2. Code of Virginia § 62.1-44.34:19, requires any person suspected of causing or permitting a discharge of oil or any operator of any facility from which there is a discharge of oil to "immediately upon learning of the discharge" notify the Board.
3. On January 2, 2007, the Department was notified by a third party of a gasoline release that occurred at CSX's ACCA Railroad Yard's Transflo Terminal (Railroad Yard) located in Richmond on Laburnum Avenue. The third party reported that they witnessed a driver for Kenan deliberately discharge 1000 gallons of gasoline from a tanker truck onto State lands and waters.
4. On January 2, 2007, the Kenan driver entered the Railroad Yard to pick up a shipment of gasoline, but was rejected when his tare weight indicated he had not completely offloaded. The driver drove to a corner of the Railroad Yard and discharged the remainder of the gasoline load onto the ground. The gasoline then flowed to an unnamed tributary of Jordan's Branch, Upham Brook, and Young's Pond in Bryan Park. The driver failed to report the discharge to the proper authorities or to his employer.
5. Subsequently, CSX hired a contractor (HEPACO) to clean up the gasoline at the Railroad Yard.
6. A Notice of Violation (NOV No. 07-01-PRO-0001) was issued by the Department on January 11, 2007, that cited Kenan for the following violations:
 - the discharge of fuel and
 - the failure to notify the Department of the discharge.
7. Kenan responded promptly to the NOV and immediately terminated the driver.
8. On January 16, 2007, the Department discussed the NOV and the discharge with Kenan. Kenan stated that it conducts a detailed investigation of the backgrounds of all individuals, which includes prior work history and conduct, criminal background, motor vehicle report, and prior training, and that once hired, drivers go through training on company policies, which include instruction on the proper handling of hazardous materials and reporting requirements for spills. Kenan drivers are also required to attend monthly meetings in which proper hazardous materials handling is reviewed. Kenan also stated that it is directly contrary to Kenan's policy and training to deliberately discharge petroleum anywhere other than to an appropriate storage facility. The driver's actions were contrary to

Kenan's policies, and he acted on his own without prior knowledge or consent of Kenan.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.20(A), orders Kenan, and Kenan voluntarily agrees to pay a civil charge of \$39,700 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Kenan. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Kenan, for good cause shown by Kenan, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Kenan by DEQ on January 11, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without delay and expense of litigation Kenan agrees to the entrance of this Consent Order, and admits the jurisdictional allegations of the Order but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.
4. Kenan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kenan declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or

required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Kenan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kenan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kenan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kenan shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Kenan intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

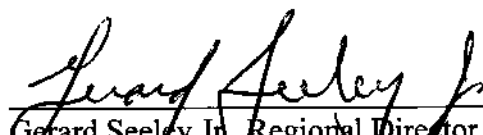
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kenan. Notwithstanding the foregoing, Kenan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Kenan completes all of the requirements of the Order and the Director or his designee approves the termination of the Order, which shall not be unreasonably withheld; or
- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Kenan.

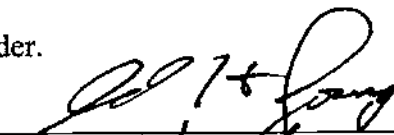
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Kenan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Kenan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 29, 2007.


Gerard Seeley Jr., Regional Director
Department of Environmental Quality

Kenan voluntarily agrees to the issuance of this Order.

By: 
Date: 4/23/07

Ohio
Commonwealth of ~~Virginia~~
City/County of Canton/Stark Cty

The foregoing document was signed and acknowledged before me this 23rd day of

April, 2007, by Carl H. Young, who is
(name)

CEO of Kenan, on behalf of the Corporation.
(title)


Notary Public

My commission expires: 3-20-2011

CHARLOTTE J. SWEGHEIMER

Notary Public

State of Ohio

My Commission Expires March 20, 2011